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**International Trade Administration**  
Washington, D.C. 20230

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March 4, 2014

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh   
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Countervailing Duty Investigation of Grain-Oriented Electrical  
Steel from the People's Republic of China: Decision  
Memorandum for the Preliminary Determination

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## I. SUMMARY

The Department of Commerce ("Department") preliminarily determines that countervailable subsidies are being provided to producers and exporters of grain-oriented electrical steel ("GOES") in the People's Republic of China ("PRC"), as provided in section 703 of the Tariff Act of 1930, as amended ("Act").

## II. BACKGROUND

### A. Case History

On September 18, 2013, the Department received a countervailing duty ("CVD") Petition concerning imports of GOES from the PRC, and an antidumping duty ("AD") Petition concerning imports of GOES from the PRC, the Czech Republic, Germany, Japan, Poland, Russia, and South Korea, filed in proper form by AK Steel Corporation ("AK Steel"), Allegheny Ludlum, LLC ("Allegheny Ludlum"), as well as the United Steelworkers, which represents employees of Allegheny Ludlum that are engaged in the production of GOES in the United States (collectively, "Petitioners").<sup>1</sup> On October 24, 2013, the Department initiated a CVD

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<sup>1</sup> See "Countervailing Duty Petition Volume II People's Republic of China," dated September 18, 2013, ("Petition") and the accompanying AD Petition. While the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") was granted an administrative protective order and qualifies as a domestic interested party, we note that UAW is not considered a petitioner in this investigation. See Memorandum to the File from James Maeder, Director, Office II, AD/CVD Operations, "Antidumping Duty Investigations of Grain-Oriented Electrical Steel (GOES) from the People's Republic of China (the PRC), the Czech



investigation of GOES from the PRC.<sup>2</sup> Supplements to the Petition and our consultations with the Government of the PRC are described in the Initiation Checklist. On October 29, 2013, we issued Quantity and Value (“Q&V”) Questionnaires to possible respondents and released U.S. Customs and Border Protection (“CBP”) data to parties under the Administrative Protective Order (“APO”). We received a Q&V from International Economic and Trading Corporation (“IETC”) and Wuhan Iron and Steel Company Limited (“WISCO”) and Baoshan Iron & Steel Co., Ltd. (“Baoshan”). We received comments on the CBP data from Baoshan and Petitioners on November 6, 2013, and November 7, 2013, respectively.

The Department selected Baoshan as the one mandatory respondent company for this investigation<sup>3</sup> and, on November 27, 2013, the Department issued a CVD questionnaire to the Government of the PRC (“GOC”). The GOC and Baoshan filed initial questionnaire responses with the Department on January 13, 2014.

On November 20, 2013, Petitioners made new subsidy allegations, which the Department addressed in a memorandum dated December 16, 2013. As a result of the Department’s decision to initiate an investigation of certain of these programs, the Department issued a new subsidy allegation questionnaire to the GOC and Baoshan on December 16, 2013. Both the GOC and Baoshan responded to this questionnaire on January 13, 2014.

On January 22, 2014, Petitioners made a further new subsidy allegation related to the purchase of assets by a government-controlled company. On February 3, 2014, both the GOC and Baoshan submitted comments on this new allegation. On February 24, 2014, the Department declined to initiate an investigation on this new allegation.

Between February 4 and 12, 2014, the Department issued supplemental questionnaires to the GOC and the mandatory respondent. Responses to these questionnaires were received February 18, 2014. On February 25, 2014, Petitioners filed a request that the Department align the final determination of this CVD investigation with the companion AD investigation of GOES from the PRC.<sup>4</sup>

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Republic, Germany, Japan, the Republic of Korea, Poland, and Russia, and Countervailing Duty Investigation of GOES from the PRC,” dated January 10, 2014.

<sup>2</sup> See *Grain-Oriented Electrical Steel from the People’s Republic of China: Initiation of Countervailing Duty Investigation*, 78 FR 65265 1 (October 31, 2013) (“Initiation”). On the same date we also published a notice of initiation for the AD investigation of GOES from the PRC, the Czech Republic, Germany, Japan, Poland, Russia, and South Korea. See *Grain-Oriented Electrical Steel From the People’s Republic of China, the Czech Republic, Germany, Japan, the Republic of Korea, Poland, and the Russian Federation: Initiation of Antidumping Duty Investigations*, 78 FR 65283 (October 31, 2013); see also Countervailing Duty Investigation Initiation Checklist: Grain-Oriented Electrical Steel from the People’s Republic of China (“PRC CVD Initiation Checklist”), dated October 24, 2013.

<sup>3</sup> See “Respondent Selection” section below.

<sup>4</sup> See Letter from Petitioners entitled “Grain-Oriented Electrical Steel from The People’s Republic of China: Request by Petitioners to Align the Final Determinations in the Companion CVD and ADD Investigations,” dated February 25, 2014.

On December 4, 2013, based upon a request from Petitioners, the Department postponed the deadline for this preliminary determination until March 3, 2014.<sup>5</sup>

#### B. *Period of Investigation*

The period of investigation (“POI”) is January 1, 2012, through December 31, 2012.

### III. SCOPE COMMENTS

In accordance with the preamble to the Department’s regulations, and as noted in the *Initiation*, we set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation*.<sup>6</sup> We received the following comments concerning the scope of this investigation.

On November 13, 2013, POSCO a respondent in the accompanying AD investigation from Korea, submitted comments on the proposed scope of both the AD and CVD investigations. Specifically, POSCO asked the Department to determine whether GOES that is further processed into shapes that are not square or rectangular fall within the scope of the Department’s investigations. On December 11, 2013, Petitioners submitted comments in response to POSCO’s filing arguing that GOES not in coiled form and neither rectangular nor square (*e.g.*, trapezoidal), whether with or without circular holes, is and should be within the scope of these AD and CVD investigations. The Department is currently considering these comments.

### IV. SCOPE OF THE INVESTIGATION

The scope of this investigation covers grain-oriented silicon electrical steel (“GOES”). GOES is a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths. The GOES that is subject to this investigation is currently classifiable under subheadings 7225.11.0000, 7226.11.1000, 7226.11.9030, and 7226.11.9060 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

### V. ALIGNMENT

The AD (PRC, the Czech Republic, Germany, Japan, Poland, Russia, and South Korea) and CVD (PRC) investigations have the same scope with regard to the merchandise covered. As noted above, on February 25, 2014, Petitioners submitted a letter, in accordance with section

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<sup>5</sup> See *Grain-Oriented Electrical Steel From the People’s Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 78 FR 75332 (December 11, 2013). Due to the closure of the Federal Government on March 3, 2014, Commerce reached this determination on the next business day (*i.e.*, March 4, 2014). See *Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

<sup>6</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); see also *Initiation*, 78 FR at 59001.

705(a)(1) of the Act, requesting alignment of the final CVD determination with the final determination in the companion AD investigations. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i), we are aligning the final CVD determination with the final determinations in the companion AD investigations of GOES from the PRC. The final CVD determination will be issued on the same date as the final AD determinations, which are currently scheduled to be issued on or about July 16, 2014.

## **VI. RESPONDENT SELECTION**

Section 777A(e)(1) the Act directs the Department to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. However, when faced with a large number of producers/exporters, and, if the Department determines it is not practicable to examine all companies, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give the Department discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise.

As noted above, on October 29, 2013, the Department determined that it was not practicable to examine more than one respondent in the instant investigation.<sup>7</sup> Therefore, the Department selected, based on data from CBP, the one exporter/producer accounting for the largest volume of GOES exported from the PRC during the POI: Baoshan.<sup>8</sup>

## **VII. INJURY TEST**

Because the PRC is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (“ITC”) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry. On November 19, 2013, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of GOES from the PRC.<sup>9</sup>

## **VIII. APPLICATION OF THE COUNTERVAILING DUTY LAW TO IMPORTS FROM THE PRC**

On October 25, 2007, the Department published its final determination on coated free sheet paper from the PRC.<sup>10</sup> In *CFS from the PRC*, the Department found that:

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<sup>7</sup> See Memorandum from Yasmin Nair, Analyst, through Richard Weible, Office Director, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations “Countervailing Duty Investigation of Grain-Oriented Electrical Steel from the People’s Republic of China: Respondent Selection,” dated November 27, 2013.

<sup>8</sup> *Id.*

<sup>9</sup> See Grain-Oriented Electrical Steel from China, Czech Republic, Germany, Japan, Korea, Poland, and Russia Investigation Nos. 701-TA-505 and 731-TA-1231-1237(November 2013) (Preliminary); *Grain-Oriented Electrical Steel From China, Czech Republic, Germany, Japan, Korea, Poland, and Russia; Determinations*, 78 FR 70574 (November 26, 2013).

<sup>10</sup> See *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (“*CFS from the PRC*”), and accompanying Issues and Decision Memorandum (“*CFS IDM*”) at Comment 6.

... given the substantial differences between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as a bar to proceeding with a CVD investigation involving products from China.<sup>11</sup>

The Department affirmed its decision to apply the CVD law to the PRC in numerous subsequent determinations.<sup>12</sup> Furthermore, on March 13, 2012, Public Law 112-99 was enacted which confirms that the Department has the authority to apply the CVD law to countries designated as non-market economies under section 771(18) of the Act, such as the PRC.<sup>13</sup> The effective date provision of the enacted legislation makes clear that this provision applies to this proceeding.<sup>14</sup>

Additionally, for the reasons stated in *CWP from the PRC*, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization ("WTO"), as the date from which the Department will identify and measure subsidies in the PRC for purposes of CVD investigations.<sup>15</sup>

## **IX. SUBSIDIES VALUATION**

### **A. Allocation Period**

The Department normally allocates the benefits from non-recurring subsidies over the average useful life ("AUL") of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.<sup>16</sup> The Department notified the respondents of the AUL in the initial questionnaire and requested data accordingly.<sup>17</sup> No party in this proceeding disputed this allocation period.

Furthermore, for non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the

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<sup>11</sup> *Id.*

<sup>12</sup> See, *e.g.*, *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) ("*CWP from the PRC*") and accompanying Issues and Decision Memorandum ("*CWP IDM*") at Comment 1.

<sup>13</sup> Section 1(a) is the relevant provision of Public Law 112-99 and is codified at section 701(f) of the Act.

<sup>14</sup> See Public Law 112-99, 126 Stat. 265 §1(b).

<sup>15</sup> See, *e.g.*, *CWP from the PRC*, and accompanying Issues and Decision Memorandum at Comment 2.

<sup>16</sup> See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

<sup>17</sup> As discussed above and in accordance with the Department's practice, regardless of the AUL chosen, we will not countervail subsidies conferred before December 11, 2001, the date of the PRC's accession to the WTO. See, *e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) and accompanying Issues and Decision Memorandum at "Subsidies Valuation Information."

same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

## B. *Attribution of Subsidies*

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting interest between two corporations, or through common ownership of two (or more) corporations.<sup>18</sup> In certain circumstances, a large minority voting interest (for example, 40 percent) may also result in cross-ownership.<sup>19</sup> The Court of International Trade upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.<sup>20</sup>

Baoshan responded to the Department's original and supplemental questionnaires on behalf of itself, a producer and exporter of the subject merchandise during the POI, and on behalf of its parent holding company, Baosteel Group Corporation ("Baosteel Group").<sup>21</sup> These companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of Baosteel Group's majority ownership in Baoshan.<sup>22</sup>

Baoshan was the producer and exporter of the subject merchandise, thus, we are preliminarily attributing subsidies received by Baoshan to its sales, in accordance with 19 CFR 351.525(b)(6)(i). Baosteel Group was the parent of Baoshan during the POI, thus, we are preliminarily attributing subsidies received by Baosteel Group to the consolidated sales of Baosteel Group and its subsidiaries, in accordance with 19 CFR 351.525(b)(6)(iii).

Baoshan reported that it had affiliated companies during the POI that provided an input product to Baoshan.<sup>23</sup> Specifically, Anhui Wanbao Mining Co., Ltd. ("Anhui Wanbao") and Zhanjiang Longteng Logistics Co., Ltd. ("Zhanjiang Longteng") provided inputs used at the iron making stage of Baoshan's production. These companies were cross-owned during the POI within the

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<sup>18</sup> See, e.g., *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998).

<sup>19</sup> *Id.*

<sup>20</sup> See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>21</sup> See Baoshan's January 13, 2014 initial questionnaire response ("Baoshan's IQR") at 3.

<sup>22</sup> See Baosteel Group's January 13, 2014 initial questionnaire response ("Baosteel Groups's IQR") at Exhibit 4.

<sup>23</sup> See Baoshan's IQR at 4.

meaning of 19 CFR 351.525(b)(6)(vi) by virtue of Baosteel Group's majority ownership in them.<sup>24</sup>

We received questionnaire responses from Anhui Wanbao and Zhanjiang Longteng very close to the deadline for these preliminary results. Because of the complexity of ownership changes during the AUL period, we do not have time to incorporate the analysis of Anhui Wanbao's cross-ownership and use of subsidy programs during the AUL period as reported by Anhui Wanbao into this preliminary determination. We intend to include these programs in the post-preliminary calculations for this proceeding. However, with respect to Zhanjiang Longteng, its cross-ownership during the AUL period is more straightforward.<sup>25</sup> We find this company to be cross-owned with Baoshan throughout the AUL period within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of Baosteel Group's majority ownership in both companies. Therefore, for purposes of our preliminary determination, we are attributing all subsidies received by Zhanjiang Longteng to the combined sales of the inputs and downstream products (excluding inter-company sales) of Zhanjiang Longteng and Baoshan, in accordance with 19 CFR 351.525(b)(6)(iv).

In its initial questionnaire and supplemental questionnaire responses, Baoshan reported that Rizhao Baoxin Mining Resources ("Rizhao Baoxin") provided an input, limestone, that is used in the production of iron at the iron making stage of Baoshan's production.<sup>26</sup> In its supplemental questionnaire response, Baoshan claimed that it is unable to provide a questionnaire response on behalf of Rizhao Baoxin.<sup>27</sup> For further discussion of our treatment of Rizhao Baoxin, see "Use Of Facts Otherwise Available And Adverse Inferences," below.

### C. *Denominators*

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, the Department considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator (or the total combined sales of the cross-owned affiliates, as described above). For a further discussion of the denominators used, see the preliminary calculation memorandum.<sup>28</sup>

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<sup>24</sup> See Baosteel Group's IQR at Exhibit 4.

<sup>25</sup> See Baoshan's February 18, 2014 supplemental questionnaire response at page 4.

<sup>26</sup> See Baoshan's IQR at Exhibit 1 and its February 4, 2014 questionnaire response at page 1.

<sup>27</sup> See Baoshan's February 4, 2014 questionnaire response at Exhibit 1.

<sup>28</sup> See Memorandum to the Richard Weible, Office Director, AD/CVD Operations, Office VI, from Yasmin Nair, Case Analyst, "Preliminary Determination Calculations for Baoshan Iron & Steel Co., Ltd. ("Baoshan"), Baosteel Group Corporation ("Baosteel Group"), and Zhanjiang Longteng Logistics Co., Ltd. ("Zhanjiang Longteng") (collectively, "Baosteel Companies")," dated concurrently with this memorandum ("Baosteel Preliminary Calculation Memo").

## X. BENCHMARKS AND DISCOUNT RATES

The Department is investigating loans received by the respondent from PRC policy banks and state-owned commercial banks (“SOCBs”), as well as non-recurring, allocable subsidies.<sup>29</sup> The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

### A. *Short-Term RMB-Denominated Loans*

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market.” Normally, the Department uses comparable commercial loans reported by the company as a benchmark.<sup>30</sup> If the firm did not have any comparable commercial loans during the period, the Department’s regulations provide that we “may use a national average interest rate for comparable commercial loans.”<sup>31</sup>

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. For the reasons first explained in *CFS from the PRC*, loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market.<sup>32</sup> Because of this, any loans received by the respondents from private PRC or foreign-owned banks would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). For the same reasons, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a PRC benchmark for loans, the Department is selecting an external market-based benchmark interest rate. The use of an external benchmark is consistent with the Department’s practice. For example, in *Lumber from Canada*, the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada.<sup>33</sup>

In past proceedings involving imports from the PRC, we calculated the external benchmark using the methodology first developed in *CFS from the PRC*<sup>34</sup> and more recently updated in *Thermal Paper from the PRC*.<sup>35</sup> Under that methodology, we first determine which countries are similar to the PRC in terms of gross national income, based on the World Bank’s classification of

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<sup>29</sup> See 19 CFR 351.524(b)(1).

<sup>30</sup> See 19 CFR 351.505(a)(3)(i).

<sup>31</sup> See 19 CFR 351.505(a)(3)(ii).

<sup>32</sup> See *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10; see also Memorandum to the File from David Cordell, Case Analyst, “Countervailing Duty Investigation of Grain-Oriented Electrical Steel from the People’s Republic of China: Banking Memoranda,” dated March 3, 2014 (“Banking Memoranda”).

<sup>33</sup> See *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (“*Lumber from Canada*”) and accompanying Issues and Decision Memorandum at “Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit.”

<sup>34</sup> See *CFS from the PRC*, and accompanying Issues and Decision Memorandum at Comment 10.

<sup>35</sup> See *Lightweight Thermal Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (“*Thermal Paper from the PRC*”) and accompanying Issues and Decision Memorandum (“*Thermal Paper IDM*”) at 8-10.



countries as: low income; lower-middle income; upper-middle income; and high income. As explained in *CFS from the PRC*, this pool of countries captures the broad inverse relationship between income and interest rates. For 2001 through 2009, the PRC fell in the lower-middle income category.<sup>36</sup> Beginning in 2010, however, the PRC is in the upper-middle income category and remained there from 2011 to 2012.<sup>37</sup> Accordingly, as explained further below, we are using the interest rates of lower-middle income countries to construct the benchmark and discount rates for 2001-2009, and we used the interest rates of upper-middle income countries to construct the benchmark and discount rates for 2010-2012. This is consistent with the Department's calculation of interest rates for recent CVD proceedings involving PRC merchandise.<sup>38</sup>

After the Department identifies the appropriate interest rates, the next step in constructing the benchmark is to incorporate an important factor in interest rate formation, the strength of governance as reflected in the quality of the countries' institutions. The strength of governance has been built into the analysis by using a regression analysis that relates the interest rates to governance indicators.

In each of the years from 2001-2009 and 2011-2012, the results of the regression analysis reflected the intended, common sense result: stronger institutions meant relatively lower real interest rates, while weaker institutions meant relatively higher real interest rates.<sup>39</sup> For 2010, however, the regression does not yield that outcome for the PRC's income group.<sup>40</sup> This contrary result for a single year does not lead us to reject the strength of governance as a determinant of interest rates. Therefore, we continue to rely on the regression-based analysis used since *CFS from the PRC* to compute the benchmarks for the years from 2001-2009 and 2011-2012. For the 2010 benchmark, we are using an average of the interest rates of the upper-middle income countries.

Many of the countries in the World Bank's upper-middle and lower-middle income categories reported lending and inflation rates to the International Monetary Fund, and they are included in that agency's international financial statistics ("IFS"). With the exceptions noted below, we used the interest and inflation rates reported in the IFS for the countries identified as "upper middle income" by the World Bank for 2010-2012 and "lower middle income" for 2001-2009.<sup>41</sup> First, we did not include those economies that the Department considered to be non-market economies for AD purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we

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<sup>36</sup> See World Bank Country Classification, <http://econ.worldbank.org/>; see also Memorandum to the File "Countervailing Duty Investigation of Grain-Oriented Electrical Steel from the People's Republic of China: Benchmark Memo," dated concurrently with this memorandum ("Preliminary Benchmark Memo").

<sup>37</sup> See World Bank Country Classification.

<sup>38</sup> See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Countervailing Duty Determination*, 78 FR 33346 (June 4, 2013) and accompanying Preliminary Decision Memorandum at "Benchmarks and Discount Rates," unchanged in *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013).

<sup>39</sup> See Banking Memoranda.

<sup>40</sup> See Preliminary Benchmark Memo.

<sup>41</sup> *Id.*

removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for each year the Department calculated an inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.<sup>42</sup> Because the resulting rates are net of inflation, we adjusted the benchmark to include an inflation component.<sup>43</sup>

#### B. *Long-Term RMB-Denominated Loans*

The lending rates reported in the IFS represent short- and medium-term lending, and there are not sufficient publicly available long-term interest rate data upon which to base a robust benchmark for long-term loans. To address this problem, the Department developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates.<sup>44</sup>

In *Citric Acid from the PRC*, this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question.<sup>45</sup> Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.<sup>46</sup>

#### C. *Foreign Currency-Denominated Loans*

To calculate benchmark interest rates for foreign currency-denominated loans, the Department is following the methodology developed over a number of successive PRC investigations. For U.S. dollar short-term loans, the Department used as a benchmark the one-year dollar London Interbank Offering Rate (LIBOR), plus the average spread between LIBOR and the one-year corporate bond rate for companies with a BB rating. Likewise, for any loans denominated in other foreign currencies, we used as a benchmark the one-year LIBOR for the given currency plus the average spread between the LIBOR rate and the one-year corporate bond rate for companies with a BB rating.

For any long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where “n” equals or approximates the number of years of the term of the loan in question. See Interest Rate Benchmark Memorandum for the resulting inflation-adjusted benchmark lending rates.

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See, e.g., *Thermal Paper from the PRC*, and accompanying Issues and Decision Memorandum at 10.

<sup>45</sup> See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009) (“*Citric Acid from the PRC*”) and accompanying Issues and Decision Memorandum (“*Citric Acid IDM*”) at Comment 14.

<sup>46</sup> See Baosteel Preliminary Calculation Memo.

### C. *Discount Rates*

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies.<sup>47</sup> The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the respondent's preliminary calculation memorandum.<sup>48</sup>

## **XI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES**

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, use the "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in relying on the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. For purposes of this preliminary determination, we find it necessary to rely on adverse facts available ("AFA") with respect to the GOC and Baoshan, as described below.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."<sup>49</sup> The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>50</sup>

### GOC – Provision of Electricity for LTAR

The GOC did not provide complete responses to the Department's questions regarding the alleged provision of electricity for LTAR. These questions requested information to determine whether the provision of electricity constituted a financial contribution within the meaning of section 771(5)(D) of the Act, whether such a provision provided a benefit within the meaning of section 771(5)(E) of the Act and whether such a provision was specific within the meaning of section 771(5A) of the Act. In both the Department's original questionnaire and the February

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>50</sup> *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H. Doc. No. 316, 103d Cong. 2d Session, at 870 (1994).

4, 2014, supplemental questionnaire, the Department asked the GOC to provide, for each province in which a respondent is located, a detailed explanation of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses and transmission, and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories. The GOC provided no provincial-specific information in response to these questions in its initial questionnaire response.<sup>51</sup> The Department reiterated these questions in a supplemental questionnaire and the GOC did not provide the requested information in its supplemental questionnaire response.<sup>52</sup> As such, we preliminarily determine that, without the missing information, we cannot make a finding with respect to financial contribution or specificity because, for example, the details required to analyze the GOC's electricity price adjustment process are contained in the price proposals, which were not submitted. Because these details are contained in the provincial price proposals, those proposals are necessary for determining whether the GOC provides a financial contribution that is specific under this program.

Consequently, we preliminarily determine that the GOC withheld necessary information that was requested of it and, thus, that the Department must rely on facts otherwise available in making our preliminary determination pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. In this regard, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act. In drawing an adverse inference, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A) of the Act. We also relied on an adverse inference in selecting the benchmark for determining the existence and amount of the benefit. The benchmark rates we selected are derived from information from the record of the instant investigation and are the highest electricity rates on this record for the applicable rate and user categories.<sup>53</sup>

#### GOC – Purchases of GOES for More Than Adequate Remuneration

The GOC did not provide complete responses to the Department's questions regarding alleged purchases of GOES for More Than Adequate Remuneration ("MTAR"). These questions requested information to determine whether purchases of GOES for MTAR constituted a financial contribution within the meaning of sections 771(5)(B) and 771(5)(D) of the Act. In both the November 27, 2013 initial and the February 4, 2014 supplemental questionnaires, we requested that the GOC provide a response to the Standard Questions Appendix. In both instances, the GOC did not provide the requested appendix.<sup>54</sup> We twice requested that the GOC

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<sup>51</sup> See the GOC's January 13, 2014 submission at 20-24.

<sup>52</sup> See the GOC's February 18, 2014 submission at 8-9, 21.

<sup>53</sup> See Preliminary Benchmark Memo.

<sup>54</sup> See the GOC's January 13, 2014 submission at 25-32; see also GOC's February 18, 2014 submission at 9-12.

report whether any of Baoshan's customers were GOC entities or companies that may be "authorities" within the meaning of section 771(5)(B) of the Act. The GOC did not provide the requested information. In both the initial and supplemental questionnaire response, the GOC did not answer the question. Instead, the GOC stated that the best records of whether products are sold pursuant to procurement laws are held by the producer, however, upon its review of the customer list, the GOC saw no sales pursuant to procurement laws.

This response by the GOC does not provide the information we requested, namely, whether Baoshan's customers include government institutions, public organizations, or other entities that might be 'authorities' within the meaning of section 771(5)(B) of the Act. The issue of the identities of Baoshan's customers goes to the question of whether these purchases constituted financial contributions under sections 771(5)(B) and 771(5)(D)(iv) of the Act. Given the GOC's failure to provide this information, we preliminarily determine that the GOC withheld necessary information that was requested of it and, thus, that the Department must rely on facts otherwise available in making our preliminary determination pursuant to sections 776(a)(1) and (a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC failed to cooperate by not acting to the best of its ability to comply with our requests for information. In this regard, the GOC did not explain why it was unable to provide the requested information, nor did the GOC ask for additional time to gather and provide such information. Consequently, an adverse inference is warranted in the application of facts available under section 776(b) of the Act. In drawing an adverse inference, we find that a financial contribution from "authorities" exists within the meaning of section 771(5)(B) of the Act. Accordingly, we preliminarily determine that these purchases of GOES constituted a financial contribution to Baoshan under 771(5)(D)(iv) of the Act. We will continue to solicit information from the GOC and Baoshan concerning the identities and ownership structure of certain of their customers after the issuance of this preliminary determination.

#### GOC – Preferential Loans to SOEs

The Department examined whether SOEs receive preferential loans through state-owned commercial or policy banks. In our initial questionnaire to the GOC, we asked for information regarding this program. For example, we asked the GOC to provide any laws that address bank lending to SOEs. We also requested the total amount of new loans issued by SOCBs in the PRC in the years 2009-2012, as well as total amount of new loans issued by SOCBs to SOEs during those years. We asked the GOC to provide this information both for SOCBs as a group and for the "Big Four" SOCBs. Additionally, we requested this information for each of the banks with outstanding loans to Baoshan and its cross-owned companies during the POI.<sup>55</sup>

In its response dated January 13, 2014, the GOC argued that "the questions are not applicable and/or the requested information does not exist. The GOC confirms that the government, whether central or provincial, has never provided preferential lending to GOES producers, whether or not such producers are SOEs."<sup>56</sup> On February 4, 2014, we requested the above information in a second supplemental questionnaire to the GOC.<sup>57</sup> The GOC again stated that

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<sup>55</sup> See Department's November 27, 2014 initial questionnaire.

<sup>56</sup> See GOC's January 13, 2014 submission at 17.

<sup>57</sup> See Department's February 4, 2014 supplemental questionnaire at 5.

the questions are not applicable and/or the requested information does not exist.<sup>58</sup> The GOC did not provide us with the total amount of loans outstanding for the “Big Four” SOCBs, and failed to provide the amount of loans provided by the “Big Four” to SOEs. The GOC also failed to provide the same information for SOCBs as a group. In its response, the GOC explained that it was unable to provide the total amount of loans issued to SOEs because it did not maintain such information.<sup>59</sup>

In the countervailing duty investigation of *OCTG from the PRC*,<sup>60</sup> the Department also requested information regarding Preferential Loans for SOEs. In that case, we asked the GOC to provide 1) the total amount of loans made by each of the “Big Four” SOCBs between 2002 and 2008, and 2) how many of those loans were made to SOEs. The GOC was able to provide this information.<sup>61</sup> Thus, the GOC’s claim in this proceeding that SOCBs do not maintain loan information specific to SOEs contradicts its responses in earlier proceedings.

The statute identifies specificity as one of three necessary elements of a countervailable subsidy. We normally rely on information from the government to determine whether a program is specific. Although it was given two opportunities, the GOC’s responses left us without the necessary information to determine whether this program is specific to SOEs under section 771(5A) of the Act.

We preliminarily find that the GOC withheld necessary information that was requested of it for this program within the meaning of section 776(a)(2)(A) of the Act. Accordingly, the Department is relying on “facts available.” Moreover, the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information, so we are applying an adverse inference in our use of facts available. Due to the GOC’s failure to provide information necessary for our determination about these programs, we are finding as adverse facts available that this program is specific. We discuss this program further below under “Analysis of Programs.”

#### GOC – Other Grants Reported By Baoshan

The GOC did not provide complete responses to the Department’s questions regarding the specificity of other grants reported by Baoshan. These responses were requested of the GOC by the initial questionnaire and the Department’s February 4, 2014 supplemental questionnaire.<sup>62</sup> The statute identifies specificity as one of three necessary elements of a countervailable subsidy. We normally rely on information from the government to determine whether a program is specific. Although it was given two opportunities, the GOC’s responses left us without the necessary information to determine whether these grants were specific to Baoshan under section

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<sup>58</sup> See the GOC’s February 18, 2014 submission at 6-7.

<sup>59</sup> *Id.*

<sup>60</sup> See *Certain Oil Country Tubular Goods From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (“*OCTG from the PRC*”).

<sup>61</sup> See Memorandum from David Cordell, International Trade Compliance Analyst to the File, “Placement of information onto the record” at Attachment 1 (March 3, 2014).

<sup>62</sup> See Department’s November 27, 2013 initial questionnaire at 11; Department’s February 4, 2014 supplemental questionnaire at 6; GOC’s January 13, 2014 submission at 33-34; GOC’s February 18, 2014 submission at 12.

771(5A) of the Act. Specifically, it did not provide a response to any of the questions in the grant appendix that we rely upon to determine specificity.

We preliminarily find that the GOC withheld necessary information that was requested of it for these grants within the meaning of section 776(a)(2)(A) of the Act. Accordingly, the Department is relying on “facts available.” Moreover, the GOC failed to cooperate by not acting to the best of its ability to comply with our request for information, so we are applying an adverse inference in our use of facts available. Due to the GOC’s failure to provide information necessary for our determination about these programs, we are finding as adverse facts available that these grants are specific. We discuss these grants further below under “Analysis of Programs.”

#### Baoshan – Import Tariff and VAT Exemptions for Foreign Invested Enterprises and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

In its January 13, 2014 initial questionnaire response at 18-19, Baoshan reported that it did not provide the requested information for this program because it did not “apply for, use, or benefit from this program during the POI. Furthermore, this question is not applicable to the period from December 11, 2001 to 2011, because any subsidies granted during that period were below the 0.5% threshold of Baoshan’s total sales revenue.” In a supplemental questionnaire, we instructed Baoshan that it should “provide detailed calculations supporting Baoshan’s assertion that any prior year’s benefit for this program would fall below the 0.5 percent threshold for allocation. Specifically, Baoshan should provide an itemized listing by year that establishes the total value of imported equipment, related import tariff and VAT exemptions, and annual sales values.”<sup>63</sup>

Baoshan responded that the subsidies accounting for more than 0.5 percent can be found in the account “extraordinary revenue – deferred income.” Baoshan also provided a list with some of the information requested by the Department, however, this list failed to establish the total value of imported equipment and also failed to identify the related import tariff and VAT exemptions. Further, Baoshan stated that it was unable to provide the requested information for 2001 and 2002.

At the outset, we note that it is the Department’s responsibility to calculate program benefits, not the respondent’s.<sup>64</sup> Based on the information that Baoshan did submit, it is clear that the calculation methodology that Baoshan used to assert that the benefits were less than 0.5 percent is not consistent with the calculation methodology that the Department uses to calculate a benefit

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<sup>63</sup> See Baoshan’s February 18, 2014 questionnaire response at page 4.

<sup>64</sup> See *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010) (stating that “{r}egardless of whether Essar deemed the license information relevant, it nonetheless should have produced it {in} the event that Commerce reached a different conclusion” and that “Commerce, and not Essar, is charged with conducting administrative reviews and weighing all evidence in its calculation of a countervailing duty margin”); *NSK, Ltd. v. United States*, 919 F. Supp. 442, 447 (CIT 1996) (“NSK’s assertion that the information it submitted to Commerce provided a sufficient representation of NSK’s cost of manufacturing misses the point that ‘it is Commerce, not the respondent, that determines what information is to be provided for an administrative review.’”); *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986) (stating that “{i}t is Commerce, not the respondent, that determines what information is to be provided”).

for this program. Therefore, Baoshan's assertion that the benefit was less than 0.5 percent is baseless. Further, Baoshan failed on two occasions to provide the information for this program that was requested by the Department. Because of this failure, we are unable to calculate the benefit for this program. Baoshan's assertion that subsidies accounting for more than 0.5 percent can be found in the "extraordinary revenue – deferred income" account is not sufficient information to calculate the benefit.

By twice not providing the requested information, Baoshan withheld requested information that is necessary to determine a CVD rate for this program for this preliminary determination. We find that Baoshan did not cooperate to the best of its ability in this investigation. Thus, in reaching our preliminary determination, pursuant to section 776(a)(2)(A) and (C) of the Act, we based the rate for this program on facts otherwise available. Baoshan has failed to cooperate by not acting to the best of its ability to comply with our request for information, so we are applying an adverse inference in our use of facts available.

#### Baoshan – Questionnaire Response for Rizhao Baoxin

As stated above, in "Subsidies Valuation", in its initial questionnaire and supplemental questionnaire responses, Baoshan reported that Rizhao Baoxin provided an input, limestone, that is used in the production of iron at the iron making stage of Baoshan's production.<sup>65</sup> In its supplemental questionnaire response, Baoshan claimed that it is unable to provide a questionnaire response on behalf of Rizhao Baoxin because they are no longer affiliated.<sup>66</sup> Baoshan placed on the record an affidavit from Rizhao Baoxin, which affirmed Rizhao Baoxin's intent to not cooperate. Baoshan provided no other information about Rizhao Baoxin's ownership to support this affidavit.

By not providing Rizhao Baoxin's response, Baoshan withheld requested information that is necessary to determine a CVD rate for Rizhao Baoxin for this preliminary determination. Thus, in reaching our preliminary determination, pursuant to section 776(a)(2)(A) of the Act, we based Baoshan's CVD rate, in part, for Rizhao Baoxin on facts otherwise available. Further, we find that Baoshan has failed to cooperate by not acting to the best of its ability to comply with our request for information. Even if we were to accept Baoshan's claim that it is no longer affiliated with Rizhao Baoxin, the fact remains that they were cross-owned during the POI. The "best of its ability" standard "does not condone inattentiveness, carelessness, or inadequate record keeping."<sup>67</sup> It requires, among other things, that exporters and producers of goods exported to the United States "take reasonable steps to keep and maintain full and complete records" that they may be called upon to produce.<sup>68</sup> Here, the cross-ownership between Baoshan and Rizhao Baoxin is not so far in the past that it would be unreasonable to expect Baoshan to be able to produce the required information. In fact, the affiliation, according to their claims, did not end until 2013. Accordingly, we find that Baoshan failed to cooperate by not acting to the best of its ability, and we are relying on an adverse inference in our use of facts available.

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<sup>65</sup> See Baoshan's IQR at Exhibit 1 and its February 18, 2014 questionnaire response at page 1.

<sup>66</sup> See Baoshan's February 18, 2014 questionnaire response at Exhibit 1.

<sup>67</sup> *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

<sup>68</sup> *Id.*



Zhanjiang Longteng - Import Tariff and VAT Exemptions for Foreign Invested Enterprises and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

In its January 13, 2014 initial questionnaire response, Baoshan stated that it was not providing a questionnaire response for Zhanjiang Longteng, an affiliated input provider.<sup>69</sup> Rather than provide a questionnaire response, Baoshan claimed that Zhanjiang Longteng does not fall into the scope of the Department's regulations concerning cross-ownership.<sup>70</sup> In a supplemental questionnaire, the Department instructed Baoshan that it should report for Zhanjiang Longteng, as this company meets the cross-ownership criteria specified in 19 CFR 351.525(b)(6)(iv). At page 14 of its February 18, 2014 questionnaire response, Zhanjiang Longteng reported that it did not "apply for; use, or benefit from this program during the POI. Furthermore, this question is not applicable to the period from December 11, 2001 to 2011, because any subsidies granted during that period were below the 0.5% threshold of Baoshan's total sales revenue."

At the outset, we note that the questionnaire clearly states that a complete questionnaire response should be provided where "cross-ownership" exists. The questionnaire further instructs the respondent that if it is unclear as to which companies must be included in the response, or if it has difficulty in providing these responses, the respondent must notify the Department in writing within 14 days of the date of the initial questionnaire. Rather than notify the Department of any uncertainty regarding cross-ownership of affiliated companies that provided inputs to Baoshan, Baoshan elected to claim in its questionnaire response that the affiliated party inputs are not primarily dedicated to production of GOES.

The initial questionnaire clearly stated that Baoshan should report benefits for this program for itself and any cross-owned companies. The initial questionnaire constituted Baoshan's first opportunity to provide the requested information. Baoshan submitted its decision to not respond for this affiliated input provider six and a half weeks after receiving the Department's questionnaire, after receiving an extension from the Department for its response. Baoshan then received an additional two weeks to provide the requested information for this program subsequent to the issuance of the Department's supplemental questionnaire. Baoshan failed to provide the requested information a second time.<sup>71</sup>

These two failures to provide the requested information resulted in the Department not having the information that is necessary to determine a CVD rate for this program for this preliminary determination with respect to Zhanjiang Longteng. Thus, in reaching our preliminary determination, pursuant to section 776(a)(2)(A) and (C) of the Act, we based the CVD rate for this program, in part, for Zhanjiang Longteng on facts otherwise available. Further, given the clear instructions in the questionnaire, the multiple extensions, and the generous eight week time period that Baoshan was given to provide this information, we find that Baoshan did not cooperate to the best of its ability in this investigation. Therefore, we are relying on an adverse inference in our use of facts available.

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<sup>69</sup> See Baoshan's IQR at 3-6.

<sup>70</sup> *Id.*

<sup>71</sup> See February 18, 2014 response at page 15.

## Zhanjiang Longteng – Preferential Loans to SOEs

As noted above, in its January 13, 2014 initial questionnaire response, Baoshan stated that it was not providing a questionnaire response for Zhanjiang Longteng, an affiliated input provider.<sup>72</sup> Rather than provide a questionnaire response, Baoshan claimed that Zhanjiang Longteng does not fall into the scope of the Department’s regulations concerning cross-ownership.<sup>73</sup> In a supplemental questionnaire, the Department instructed Baoshan that it should report for Zhanjiang Longteng, as this company meets the cross-ownership criteria specified in 19 CFR 351.525(b)(6)(iv).

In its February 18, 2014 questionnaire response, Zhanjiang Longteng reported its loans. However, for certain loans, Zhanjiang did not report the life of the loans or the time period of the loans. For these loans, we cannot calculate whether a benefit exists, because we do not know whether to use a long or short-term lending rate as benchmark.

As detailed above, Baoshan had two opportunities to provide a complete questionnaire response for Zhanjiang Longteng. The two failures to provide the requested information resulted in the Department not having the information that is necessary to determine a CVD rate for this program for this preliminary determination with respect to Zhanjiang Longteng. Thus, in reaching our preliminary determination, pursuant to section 776(a)(2)(A) of the Act, we based the CVD rate for this program, in part, for Zhanjiang Longteng on facts otherwise available. Further, given the clear instructions in the questionnaire, the multiple extensions, and the generous eight week time period that Baoshan was given to provide this information, we find that Baoshan did not cooperate to the best of its ability in this investigation. Therefore, we are relying on an adverse inference in our use of facts available. For the loans where Zhanjiang Longteng’s response is incomplete, we are using the highest interest rate on record for the year of receipt of those loans.

### **Selection of the Adverse Facts Available**

The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse “as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner.” The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>74</sup>

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject

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<sup>72</sup> See Baoshan’s IQR at 3-6.

<sup>73</sup> *Id.*

<sup>74</sup> See Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act (URAA), H. Doc. No. 16, 103d Cong. 2d Session at 870 (1994).

merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>75</sup> The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.<sup>76</sup>

The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.<sup>77</sup>

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.<sup>78</sup>

It is the Department’s practice in a CVD investigation to select, as AFA, the highest calculated rate for the same or similar program.<sup>79</sup> When selecting rates, we first determine if there is an identical program in the investigation with a rate above zero (or if none in the investigation, we look for the identical program with an above de minimis rate in previous cases from the same country), and take the highest calculated rate for the identical program. If there is no identical program, we then determine if there is a similar/comparable program (based on treatment of the benefit) in the investigation (or if none in the investigation, we look to other proceedings in the same country) and apply the highest calculated rate for a similar/comparable program. Where there is no comparable program, we apply the highest calculated rate from any non-company specific program but do not use a rate from a program if the industry in the proceeding cannot use that program.<sup>80</sup>

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<sup>75</sup> See SAA, at 870.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*, at 869-870.

<sup>78</sup> See, e.g., *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

<sup>79</sup> See, e.g., *Laminated Woven Sacks From the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (“*LWS from the PRC*”), and accompanying issues and decision memorandum at “Selection of the Adverse Facts Available;” *Aluminum Extrusions From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (“*Aluminum Extrusions from the PRC*”), and accompanying issues and decision memorandum at “Application of Adverse Inferences: Non-Cooperative Companies;” and *Galvanized Steel Wire From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 17418 (March 26, 2012) (“*Steel Wire from the PRC*”), and accompanying issues and decision memorandum at “Use of Facts Otherwise Available and Adverse Inferences.”

<sup>80</sup> See, e.g., *Aluminum Extrusions from the PRC* and *Steel Wire from the PRC*.

Baoshan and Zhanjiang Longteng – Import Tariff and VAT Exemptions for Foreign Invested Enterprises and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries

Because Baoshan failed to act to the best of its ability in this investigation, as discussed above, for the Import Tariff and VAT Exemptions for Foreign Invested Enterprises and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries program, we made an adverse inference that Baoshan and Zhanjiang Longteng benefited from this program. For this program, we do not have a rate calculated in this proceeding. Accordingly, we are taking the highest calculated rate for the identical program in a prior proceeding.

Zhanjiang Longteng – Preferential Loans to SOEs

Because Baoshan failed to act to the best of its ability in this investigation, as discussed above, for Zhanjiang Longteng's Preferential Loans to SOEs program, we made an adverse inference that Zhanjiang Longteng benefited from this program. For the loans where Zhanjiang Longteng's response is incomplete, we are using the highest interest rate on record for the year of receipt of those loans.

Baoshan – Questionnaire Response for Rizhao Baoxin

Because Baoshan failed to act to the best of its ability in this investigation, as discussed above, for each program examined, we made an adverse inference that Rizhao Baoxin benefited from each program. For programs with calculated rates in this proceeding, we are using the highest calculated rate for the identical program. The programs with calculated rates include:

- Preferential Loans to SOEs
- Government Provision of Allocated Land-Use Rights for LTAR
- Provision of Electricity for LTAR
- Enterprise Tax Law Research and Development Program

To calculate the program rate for the alleged income tax programs for which we did not calculate a benefit in this proceeding, and that pertain to either the reduction of income tax paid or the payment of no income tax, we applied an adverse inference that Rizhao Baoxin paid no income tax during the POI. The standard income tax rate for corporations in the PRC in effect during the POI was 25 percent.<sup>81</sup> Thus, the highest possible benefit for these income tax programs is 25 percent. Accordingly, we are applying the 25 percent AFA rate on a combined basis.

Consistent with past practice, the 25 percent AFA rate does not apply to the income tax credit and rebate or import tariff and value add tax ("VAT") exemption programs because such programs may not affect the tax rate.<sup>82</sup> For all programs other than those involving income tax rate reduction or exemptions, we are applying, for programs for which we did not calculate a benefit in this proceeding and where available, the highest subsidy rate calculated for the same or similar program in a PRC CVD investigation or administrative review. For additional

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<sup>81</sup> See Petitionat Volume II at 26-27 and CVD Exhibits 29 to 33.

<sup>82</sup> See, e.g., *Aluminum Extrusions from the PRC* at "Application of Adverse Inferences: Non-Cooperative Companies."

information about the AFA calculation for Rizhao Baoxin, see Baosteel Preliminary Calculation Memo.

In the absence of record evidence concerning the alleged programs due to Rizhao Baoxin's decision not to participate in the investigation, the Department has reviewed the information concerning Chinese subsidy programs in this and other cases, *supra*. For those programs for which the Department found the same program in a prior PRC CVD proceeding, we find that programs of the same type are relevant to the programs of this case. For the programs for which there is no identical program calculated in a prior PRC CVD proceeding, we selected the highest calculated subsidy for a similar program from which Rizhao Baoxin could conceivably receive a benefit to use as the AFA rate. Due to the lack of participation by the respondents and the resulting lack of record information concerning these programs, the Department corroborated the rates it selected to the extent practicable for this preliminary determination.

On this basis, we determine the AFA countervailable subsidy rate for Rizhao Baoxin to be 42.63 percent *ad valorem*.

## **XII. ANALYSIS OF PROGRAMS**

Based upon our analysis and the responses to our questionnaires, we preliminarily determine the following:

### **A. *Programs Preliminarily Determined to Be Countervailable***

#### **1. *Policy Loans to the GOES Industry***

The Department is examining whether GOES producers receive preferential lending through state-owned commercial or policy banks. According to the allegation, preferential lending to the GOES industry is supported by the GOC through the issuance of national and provincial five-year plans; industrial plans for the steel sector; catalogues of encouraged industries, and other government laws and regulations.<sup>83</sup> Based on our review of the information and responses of the GOC, we preliminarily determine that loans received by the GOES industry from SOCBs were made pursuant to government directives.

Record evidence demonstrates that the GOC, through its directives, has highlighted and advocated the development of the GOES industry. At the national level, the GOC has placed an emphasis on the development of high-end, value-added steel products through foreign investment, as well as through technological research, development, and innovation. In laying out this strategy, the GOC has identified the specific products it has in mind. For example, in the "Steel and Iron Industry Development Policy, Order No. 35 of the National Reform and Development Commission" ("Steel Plan")<sup>84</sup>, which was promulgated by the State Council in 2005, the GOC outlined objectives for the steel industry during the period 2006-2010. This plan affirmed the steel industry's strategic importance to the PRC's national economy and stressed the

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<sup>83</sup> See Petition at Volume I at 18-23.

<sup>84</sup> See Petition at CVD Exhibit-1.

need for “the sound development of the iron and steel industry.”<sup>85</sup> Article 19 of the Steel Plan specifically encouraged specialty steel enterprises, including producers of GOES, to “carry out research, develop and produce special steel for the use of the military industry, bearing, gears, models, heat resistance, cold resistance and corrosion resistance, *etc.* so as to enhance the product quality and technical level.”<sup>86</sup>

Similarly, in the “Development Policies for the Iron and Steel Industry”<sup>87</sup> (July 2005) at Article 16, the GOC states that it will “... enhance the R&D, design, and manufacture level in relation to the key technology, equipment and facilities for the Chinese steel industry.” To accomplish this, the GOC states it will provide support to key steel projects relying on domestically produced and newly developed equipment and facilities, through tax and interest assistance, and scientific research expenditures. Later in 2005, the GOC implemented the “Decision of the State Council on Promulgating the Temporary Provisions on Promoting Industrial Structure Adjustment (No. 40 (2005))” (“Decision 40”)<sup>88</sup> in order to achieve the objectives of the Eleventh Five-Year Plan. Decision 40 references the Directory Catalogue on Readjustment of Industrial Structure (“Industrial Catalogue”), which outlines the projects which the GOC deems “encouraged,” “restricted,” and “eliminated,” and describes how these projects will be considered under government policies. For the “encouraged” projects, Decision 40 outlines several support options available to the government, including financing. The “Guidance Catalogue for the Industrial Structure Adjustment (Version 2011)”<sup>89</sup> identifies GOES as “encouraged.” In addition to establishing eligibility for certain benefits from the central government, the Guidance Catalogue also gives provincial and local authorities the discretion to implement their own policies to promote the development of favored industries.

More recently, the updated “Iron and Steel Industry 12th Five-Year Plan”<sup>90</sup> (the “Iron & Steel Plan”), which covers 2011 through 2015, designates “high magnetic induction grain oriented silicon steel” and other “specialty steel products” as “key steel product types” that are to be given developmental priority for China. The Iron & Steel Plan calls for special treatment of “leading specialty steel enterprises” including Baosteel Specialty Steel, which the GOC confirmed is a cross-owned company of Baosteel Group. The Iron & Steel Plan further requires that government entities “coordinate” policies to this end, “including fiscal policy, taxation policy, finance policy, trade policy, land policy, energy saving policy, {and} environmental protection policy ....”

In order to provide additional direction to the specialty steel industry, the GOC issued the “High Quality Specialty Steel Science and Technology Development 12th Five Year Special Plan” (the “Specialty Steel Plan”)<sup>91</sup>. The Specialty Steel Plan identifies electrical/silicon steel (which includes GOES) as a “high quality specialty steel” and as a key technology. It also designates the development of super low iron loss and high silicon electrical steel as a key task

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<sup>85</sup> See, e.g., Order of the National Development and Reform Commission No. 3: Policies for Development of Iron and Steel Industry (July 8, 2005 ) at Art. 1; Art. 3; and Art. 14.

<sup>86</sup> *Id.*

<sup>87</sup> See Petition at CVD Exhibit-1.

<sup>88</sup> *Id.* at CVD Exhibit-11.

<sup>89</sup> *Id.* at CVD Exhibit-10.

<sup>90</sup> *Id.* at CVD Exhibit-2.

<sup>91</sup> *Id.* at CVD Exhibit-3.

for the 12<sup>th</sup> five year period and calls for organizing national-level science and technology innovation teams focusing on electrical steel. In addition, the Specialty Steel Plan echoes the Iron & Steel Plan by calling for the promotion of production of the subject merchandise through means including: fiscal policy, taxation policy, finance policy, trade policy, land policy, energy saving policy, environmental protection policy, and production safety policy.

Another industrial policy addressing GOES is the “Circular of the State Council on Printing and Distributing the 12th Five Year National Strategic Emerging Industry Development Plan.”<sup>92</sup> This circular from the PRC’s highest executive authority identifies “major projects” as projects involving the application of “high magnetic induction grain-oriented silicon steel.” The circular further calls for increasing “fiscal, taxation, and financial policy support” for such projects. In particular, it directs that relevant entities will “establish strategic emerging industry development special fund, and strongly support major key technology research and development, major industry innovation development projects,” among others. It further provides that the government will “strengthen the combination of financial policy and fiscal policy {and} ... encourage financial institutions to increase credit loan supports to strategic emerging industries.”

The “Circular of Printing and Distributing the New Materials Industry 12th Five Year Development Plan”<sup>93</sup> issued by the Ministry of Industry and Information Technology also addresses GOES. This industrial policy specifies that casting technologies for GOES production facilities are included in the nation’s development priorities. Consequently, government units are instructed to implement the policy earnestly and coordinate with other policies, such as financial policy, taxation policy, land policy, and trade policy. The circular continues that relevant entities should:

Strengthen the cooperation of government, enterprises, research institutes and financial institutions, and gradually form a government, industry, academia, research, and financial supporting and promoting system....Encourage financial institutions to innovate credit loan products and services that match the development characteristics of the new materials industry, reasonably increase credit loan support, establish new materials industry development special loans at financial institutions such as China Development Bank, and actively support enterprises, projects, and industrial parks/zones that match the new materials industry development plan and policies. Support qualified new materials enterprises to finance by IPO, issue enterprise bonds and company bonds.

These steel-specific plans provide authorities with a broad range of fiscal incentives (such as loans and interest discounts) and enforcement powers to support the government’s industrial policy objectives. Thus, the GOC’s steel-industry planning documents establish a comprehensive policy framework through which the PRC authorities directly support and influence the business activities of GOES producers in accordance with the government’s industrial policy initiatives.

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<sup>92</sup> *Id.* at CVD Exhibit-5.

<sup>93</sup> *Id.* at CVD Exhibit-6.

As noted in *Citric Acid from the PRC*:<sup>94</sup>

In general, the Department looks to whether government plans or other policy directives lay out objectives or goals for developing the industry and call for lending to support those objectives or goals. Where such plans or policy directives exist, then we will find a policy lending program that is specific to the named industry (or producers that fall under that industry).<sup>95</sup> Once that finding is made, the Department relies upon the analysis undertaken in *CFS from the PRC*<sup>96</sup> to further conclude that national and local government control over the SOCBs results in the loans being a financial contribution by the GOC.<sup>97</sup>

Therefore, on the basis of the record information described above, we preliminarily determine that the GOC has a policy in place to encourage the development of production of GOES through policy lending. The loans to GOES producers from Policy Banks and SOCBs in the PRC constitute financial contributions from “authorities” within the meaning of sections 771(5)(B) and 771(5)(D)(i) of the Act, and they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans (*see* section 771(5)(E)(ii) of the Act). Finally, we determine that the loans are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because of the GOC’s policy, as illustrated in the government plans and directives, to encourage and support the growth and development of the GOES industry.

To calculate the benefit under the policy lending program, we used the benchmarks described under “Benchmarks and Discount Rates” above. *See* also 19 CFR 351.505(c). On this basis, we preliminarily determine that Baoshan received a countervailable subsidy of 0.09 percent *ad valorem*.

## 2. *Preferential Loans to SOEs*

As explained above under “Use of Facts Otherwise Available and Adverse Inferences,” we requested information related to this program from the GOC twice. The GOC failed to provide adequate responses to our questions both times. As a result, necessary information is not on the record. In cases where an interested party withholds information that has been requested or where there is not enough information on the record for us to determine whether a program is specific, we use facts otherwise available.<sup>98</sup> Furthermore, an adverse inference is warranted where a party fails to cooperate by not acting to the best of its ability to comply with a request

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<sup>94</sup> *See Citric Acid from the PRC*, and *Citric Acid IDM*, at Comment 5.

<sup>95</sup> *See CFS IDM*, at 49; and *Thermal Paper IDM*, at 98.

<sup>96</sup> *See CFS IDM*, at Comment 8.

<sup>97</sup> *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) (“*OTR Tires from the PRC*”), and the accompanying Issues and Decision Memorandum (“*OTR Tires IDM*”) at 15; and *Thermal Paper IDM* at 11.

<sup>98</sup> *See* sections 776(a)(1) and 776(a)(2)(A) of the Act.



for information from the Department.<sup>99</sup> Therefore, we determine, as AFA, that this program is specific to SOEs.

We also determine that loans from SOCBs to SOEs under this program constitute financial contributions, pursuant to sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. They provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans.<sup>100</sup> To calculate the benefit under the preferential loans for SOEs program, we used the benchmarks described under “Loan Benchmarks” above.<sup>101</sup> We divided the interest savings during the POI by the combined sales (exclusive of inter-company sales) of Baosteel Group during the POI, in accordance with 19 CFR 351.525(b)(6)(iii).

On this basis, we determine that Baosteel received a countervailable subsidy of 0.02 percent *ad valorem*.

### 3. *Government Provision of Allocated Land-Use Rights for LTAR*

The Department has previously determined that allocated land-use rights are provided for at LTAR by the GOC to SOEs.<sup>102</sup> Baoshan reported that both Baoshan and its parent, Baosteel Group, are SOEs. As discussed in *OTR Tires from the PRC*, there are two main types of land-use rights in the PRC: “granted” (sometimes referred to as “conveyed”) and “allocated.” The GOC transfers allocated land-use rights to state entities for a nominal one-time charge and annual fee. These allocated land-use rights may not expire, may not be leased or mortgaged, and can be transferred (or shared for commercial purposes) legally only if they are first converted to granted land-use rights, *i.e.*, those rights transferred to private entities as described below.<sup>103</sup>

Allocated land-use rights are substantially different from granted land-use rights. Granted land-use rights can be purchased by private entities directly from the government on the “primary market” or from other granted land-use rights holders on the “secondary” market. Granted land-use rights can be transferred or mortgaged and require a large up-front fee, but carry no annual fees aside from taxes. Therefore, allocated land-use rights, which can only be transferred to state entities and which are subject to significantly different terms than granted land-use rights, are specific to SOEs pursuant to section 771(5A)(D)(i) of the Act.<sup>104</sup>

Baosteel Group reported that it did not receive any allocated land after the December 11, 2001 cut-off date. Accordingly, the Department preliminarily determines that certain land-use rights of Baoshan, provided after December 11, 2001, are countervailable. The allocated land rights are available only to SOEs and, thus, are specific under section 771(5A)(D)(i) of the Act. We

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<sup>99</sup> See section 776(b) of the Act.

<sup>100</sup> See section 771(5)(E)(ii) of the Act.

<sup>101</sup> See also 19 CFR 351.505(c).

<sup>102</sup> See, *e.g.*, *OTR Tires* IDM at 20.

<sup>103</sup> See Ho, Samuel P.S., and Lin, George C.S., “Emerging Land Markets in Rural and Urban China: Policies and Practices” (*The China Quarterly*, 2003), 687-88.

<sup>104</sup> *Id.*

further determine that the GOC's provision of land rights is a financial contribution within the meaning of section 771(5)(D)(iii) of the Act.

Finally, the Department has determined that the provision of these rights provided a benefit pursuant to 19 CFR 351.511(a). Pursuant to section 771(5)(E)(iv) of the Act, a benefit is conferred when the government provides a good or service for LTAR. Section 771(5)(E) of the Act further states that "the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of sale." 19 CFR 351.511(a)(2) sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for less than adequate remuneration. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles.

To determine whether Baoshan received a benefit, we analyzed potential benchmarks in accordance with 19 CFR 351.511(a). First, we look to whether there are market determined prices within the country. *See* 19 CFR 351.511(a)(2)(i). In *LWS from the PRC*, the Department determined that "Chinese land prices are distorted by the significant government role in the market" and, hence, that usable tier one benchmarks do not exist.<sup>105</sup> The Department also found that tier two benchmarks (world market prices that would be available to purchasers in the PRC) are not appropriate. *See* 19 CFR 351.511(a)(2)(ii). Therefore, the Department determined the adequacy of remuneration by reference to tier three and found that the sale of land-use rights in the PRC was not consistent with market principles because of the overwhelming presence of the government in the land-use rights market, and the widespread and documented deviation from the authorized methods of pricing and allocating land.<sup>106</sup> *See* 19 CFR 351.511(a)(2)(iii).

There is insufficient new information on the record of this investigation to warrant a change from the findings in *LWS from the PRC*. For these reasons, we are not able to use PRC or world market prices as a benchmark. Therefore, consistent with our decision in the *OTR Tires from the PRC* preliminary determination, we are comparing the prices that Baoshan paid for its allocated land-use rights with comparable market-based prices for land leases in a country at a comparable level of economic development that is reasonably proximate to the PRC. Specifically, we are comparing the prices Baoshan paid to leases of certain industrial land in industrial estates, parks, and zones in Thailand, consistent with *LWS from the PRC* and *Solar Cells from the PRC*.<sup>107</sup>

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<sup>105</sup> *See Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) ("*LWS from the PRC*"), and accompanying Issues and Decision Memorandum ("*LWS IDM*") at 15). *See also* Baosteel Preliminary Calculation Memo at Attachment 3 (Memorandum from Toni Page to the File titled "Land Benchmark Information" (November 26, 2007), which the Department cited in the *LWS from the PRC Preliminary Determination*).

<sup>106</sup> *Id.* at 15 and Comment 10.

<sup>107</sup> *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788

Following the methodology from *Solar Cells from the PRC*, we relied on four publicly-available quarterly reports from C.B. Richard Ellis. The quarterly reports include industrial land prices for plots in industrial estates, parks, and zones in the Philippines, Thailand, and other Asian countries.<sup>108</sup> Where certain lease information was not available for the POI but was available for the year prior to the POI, we applied an inflation adjustment to derive a proxy for the POI. See Baosteel Preliminary Calculation Memo.

To calculate the benefit, we computed the amount that Baoshan would have paid for its land-use rights and subtracted the amounts Baoshan actually paid. We divided the POI benefit by POI sales. On this basis, we determine a countervailable subsidy rate of 0.04 percent *ad valorem* for Baoshan.

#### 4. *Provision of Electricity for LTAR*

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the GOC’s provision of electricity for LTAR in part on AFA. Therefore, we determine that the GOC’s provision of electricity confers a financial contribution as a provision of a good under section 771(5)(D)(iii) of the Act, and is specific under section 771(5A)(D)(iii) of the Act.

For determining the existence and amount of any benefit under this program, we selected the highest non-seasonal provincial rates in the PRC, as provided by the GOC, for each electricity category (*e.g.*, “large industry,” “general industry and commerce”) and “base charge” (either maximum demand or transformer capacity) used by the respondent. Additionally, where applicable, we identified and applied the peak, normal, and valley rates within a category.

Consistent with our approach in *Wind Towers from the PRC*, we first calculated the respondent’s variable electricity costs by multiplying the monthly kWh consumed at each price category (*e.g.*, peak, normal, and valley, where appropriate) by the corresponding electricity rates paid by the respondent during each month of the POI.<sup>109</sup> Next, we calculated the benchmark variable electricity costs by multiplying the monthly kWh consumed at each price category by the highest electricity rate charged at each price category. To calculate the benefit for each month, we subtracted the variable electricity costs paid by the respondent during the POI from the monthly benchmark variable electricity costs.

To measure whether the respondent received a benefit with regard to its base rate (*i.e.*, either maximum demand or transformer capacity charge), we first multiplied the monthly base rate charged to the companies by the corresponding consumption quantity. Next, we calculated the benchmark base rate cost by multiplying the company’s consumption quantities by the highest maximum demand or transformer capacity rate. To calculate the benefit, we subtracted the

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(October 17, 2012) (“*Solar Cells from the PRC*”), and accompanying Issues and Decision Memorandum (“*Solar Cells IDM*”) at 6.

<sup>108</sup> See Baosteel Preliminary Calculation Memo at Attachment 3 (benchmark pages from *Solar Cells from the PRC*).

<sup>109</sup> See *Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (“*Wind Towers from the PRC*”), and accompanying Issues and Decision Memorandum (*Wind Towers IDM*) at 21-22.

maximum demand or transformer capacity costs paid by the company during the POI from the benchmark base rate costs. We then calculated the total benefit received during the POI under this program by summing the benefits stemming from the respondent's variable electricity payments and base rate payments.<sup>110</sup>

To calculate the net subsidy rates attributable to Baoshan, Baosteel Group, and Zhanjiang Longteng, we divided the benefit by total sales as described in the "Subsidies Valuation Information" section above. On this basis, we determine countervailable subsidy rates of 0.72 percent *ad valorem*.

## 5. *Enterprise Tax Law Research and Development Program*

Article 30.1 of the Enterprise Income Tax Law of the PRC created a new program regarding the deduction of research and development expenditures by companies, which allows enterprises to deduct, through tax deductions, research expenditures incurred in the development of new technologies, products, and processes. Article 95 of Regulation 512 provides that, if eligible research expenditures do not "form part of the intangible assets value," an additional 50 percent deduction from taxable income may be taken on top of the actual accrual amount. Where these expenditures form the value of certain intangible assets, the expenditures may be amortized based on 150 percent of the intangible assets costs.<sup>111</sup> Baoshan reported benefitting from this program during the POI. The Department previously found in *Wind Towers from the PRC* and *Solar Cells from the PRC* that the benefit is countervailable.<sup>112</sup>

The Department verified the specificity of this program in *Wind Towers from the PRC*.<sup>113</sup> This income tax deduction is a financial contribution in the form of revenue foregone by the government, and it provides a benefit to the recipients in the amount of the tax savings, pursuant to section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also continue to determine that the income tax deduction afforded by this program is limited as a matter of law to certain enterprises, *i.e.*, those with research and development in eligible high-technology sectors and, thus, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit from this program to Baoshan, we treated the tax credits as recurring benefits, consistent with 19 CFR 351.524(c)(1). To compute the amount of the tax savings, we calculated the amount of tax Baoshan would have paid absent the tax deductions at the standard tax rate of 25 percent (*i.e.*, 25 percent of the tax credit). We then divided the tax savings by the appropriate total sales denominator, as described in the "Subsidies Valuation" section, above.

On this basis, we determine a countervailable subsidy rate of 0.43 percent *ad valorem* for Baoshan.

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<sup>110</sup> For more information on the respondent's electricity usage categories and the benchmark rates we have used in the benefit calculations, see Electricity Benchmark Memo. For the calculations, see Baosteel Preliminary Calculation Memo.

<sup>111</sup> See GOC's January 13, 2014 New Subsidy Allegation Questionnaire Response at 2.

<sup>112</sup> See *Wind Towers from the PRC* IDM at page 18 and 19, and Comment 17; *see also* *Solar Cells from the PRC* IDM at Comment 25.

<sup>113</sup> See *Wind Towers from the PRD* IDM at page 18 and 19.

6. *Purchases of GOES for MTAR*

We initiated on a program that alleged that the GOC, under the Government Procurement Law and the Indigenous Innovation program, purchases GOES for MTAR. As discussed in the “Use of Facts Otherwise Available And Adverse Inferences” section above, in both the initial and supplemental questionnaires, we requested that the GOC provide a response to the Standard Questions Appendix. In both instances, the GOC did not provide the requested response. Despite the GOC’s assertions that GOES is not included in government or Shanghai procurement catalogues, the Shanghai Government Centralized Procurement Catalogue and the Government Procurement Thresholds for 2012 (HUCAIKU {2011} No. 49), list “other goods” where the budget amount is more than RMB 3,000,000 and “electricity project” including new construction, reconstruction, expansion, decoration, demolition and renovation.<sup>114</sup> In their allegation, Petitioners specifically cite to power projects and purchases by the State Grid Corporation and China Southern Power Grid Company as instances where GOES may have been purchased for MTAR by SOEs. Thus, we preliminarily determine that the procurement catalogues may have covered purchases of GOES used for electricity projects.

For the reasons explained in the “Use of Facts Otherwise Available and Adverse Inferences” section above, we are basing our determination regarding the purchases of GOES for MTAR in part on AFA. Therefore, we determine that the GOC’s or other authorities’ purchases of GOES constitute a financial contribution as a purchase of a good under section 771(5)(D)(iv) of the Act.

Having addressed the issue of financial contribution, we must next analyze whether the sales of GOES to authorities conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act. The Department has investigated subsidy allegations involving the sale of a good for MTAR in relatively few proceedings. The most recent proceeding in which the Department found the purchase of a good for MTAR was Low Enriched Uranium (LEU) from France.<sup>115</sup> In *LEU from France*, the Department measured whether a benefit was conferred by comparing the price the government authority paid to the respondent for LEU compared to the prices the government authority paid to other foreign suppliers of LEU.<sup>116</sup> In *LEU from France*, the Department indicated that it was conducting the benefit calculation in this manner because it was the only means by which the Department would be able to utilize benchmark prices paid in the country of provision.<sup>117</sup> Thus, in *LEU from France*, the Department’s aim was to utilize a benchmark available in the country of provision. In *LEU from France*, such a benchmark was only available using pricing data supplied by the Government of France (e.g., pricing data from the perspective of the buyer).

In the instant investigation, we preliminarily determine that we cannot use any of Baoshan’s reported sales as benchmark, because the GOC’s lack of response did not allow us to identify

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<sup>114</sup> See GOC’s February 18, 2014 response at Exhibit O-II.D.3.

<sup>115</sup> See, e.g., *Notice of Final Affirmative Countervailing Duty Determination: Low Enriched Uranium From France*, 66 FR 65901 (December 21, 2001) (“*LEU from France*”), and accompanying Decision Memorandum (“*LEU IDM*”) at “Purchase at Prices that Constitute More Than Adequate Remuneration.”

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

whether Baoshan made sales to private customers. In its initial questionnaire response, the GOC provided information, in the aggregate, on the amount of GOES produced by entities in which the GOC maintains either direct or indirect ownership interest.<sup>118</sup> This data indicates that 86 percent of GOES was produced by government entities. Consequently, because of the government's overwhelming involvement in the GOES market, the use of private producer prices in the PRC would be akin to comparing the benchmark to itself (*i.e.*, such a benchmark would reflect the distortions of the government presence). As we explained in *Lumber from Canada*, in an analogous situation involving the government provision of goods:

Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.

For these reasons, prices stemming from private transactions within the PRC cannot give rise to a price that is sufficiently free from the effects of the GOC's actions and, therefore, cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration.

Given that we preliminarily determined that no in-country benchmark prices are available, we next evaluated information on the record to determine whether there is a world market price available to purchasers of subject merchandise in the PRC. We note that Petitioners provided data from the Global Trade Atlas ("GTA"), which contains monthly "world" prices for GOES.<sup>119</sup>

We preliminarily determine that the GTA data may serve as a world market benchmark price for GOES that would be available to purchasers of GOES in the PRC. The prices for GOES in the GTA data are expressed in U.S. dollars (USD) per kilogram (kg). To determine the benchmarks, we calculated an average of the GTA GOES prices (inclusive of ocean freight, import duties, and inland freight from the port in China) for each month of the POI. We first converted the benchmark prices from U.S. dollars to renminbi (RMB) using USD to RMB exchange rates, as reported by the Federal Reserve Statistical Release. Because the GTA data do not include ocean freight, we added ocean freight to the each of the monthly GOES. We also adjusted the data to include the value added tax (VAT) and import duties that would have been levied on imports of GOES during the POI. The GOC provided the applicable tax rates in its questionnaire response. For further information concerning ocean and inland freight, see Baosteel's Preliminary Calculation Memo. Regarding the GOES prices that Baoshan sold, we included domestic VAT and inland freight. In this manner, we find the Department conducted the comparison on an apples-to-apples basis. We will continue to examine the benchmark used in this MTAR benefit

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<sup>118</sup> See GOC initial questionnaire response ("IQR") at page 5.

<sup>119</sup> See Factual Information Regarding Adequacy of Remuneration, dated February 4, 2014 at enclosure entitled GOES Imports of Various Countries in Jan: Dec. 2012.

calculation in order to determine the most appropriate benchmark for the final determination and we invite interested parties to comment on this issue.

Comparing the benchmark unit sales prices to Baoshan's unit sales prices, we determine that a benefit exists in the amount of the difference between the benchmark sales price and the sale prices charged to GOC authorities. *See* section 771(5)(E)(iv) of the Act. To calculate the benefit on each transaction, we multiplied the unit benefit by the corresponding quantity. We then summed the benefits on each transaction to calculate the total benefit attributable to Baoshan.

Finally, with respect to specificity, we preliminarily determine that this program is specific under section 771(5A)(C) of the Act because the government procurement program is contingent upon the use of domestic goods over imported goods, as evidenced by the price premium set forth in the Implementing Measures of the Procurement Law.<sup>120</sup>

On this basis, we calculated a total net subsidy rate of 3.95 percent *ad valorem* for Baoshan.

## 7. *Other Grants*

Baoshan reported receiving various individual grants during the POI from the GOC. These grants were disclosed in its 2012 annual report. On the basis of Baoshan's description of these grants, we categorized the subsidies as either non-recurring or recurring.

We find that grants issued to Baoshan by the GOC constitute a financial contribution under section 771(5)(D)(i) of the Act, in the form of a direct transfer of funds, and a benefit under section 771(5)(E) of the Act. As discussed under "Use of Facts Otherwise Available and Adverse Inferences," we are relying on AFA to determine that these grant programs are specific under section 771(5A) of the Act, because the GOC failed to submit the requested information that would allow us to determine specificity.

For non-recurring grants, to calculate the benefit, we first applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). For grants that were greater than 0.5 percent of the company's total sales for the respective years in which the grants were approved, consistent with 19 CFR 351.524(c), we allocated the benefits over the 15-year AUL from the year in which each grant was received and applied a discount rate discussed in the "Benchmarks and Discount Rates" section, above. For grants that were less than 0.5 percent of the company's total sales, we expensed the grant to the year of receipt.

For recurring grants, to calculate the benefit, we divided the amount of the grant by the total sales of Baoshan in the year of approval/receipt.

On this basis, we determine a countervailable subsidy of 0.13 percent *ad valorem* for Baosteel for these grants.

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<sup>120</sup> *See* GOC's IQR at Exhibit O-II.D.1 at Article 10.

F. *Programs Preliminarily Determined Not to Be Used During the POI*

The Department preliminarily determines that the following programs were not used by Baoshan, Baosteel Group, or Zhanjiang Longteng during the POI:

1. *Income Tax Reductions for HNTes*
2. *Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment*
3. *State Key Technology Project Fund*
4. *Special Fund for Energy Savings Technology Reform*
5. *Export Credits*
6. *Shanghai City Tax Refund and Administrative Fee Reduction for Advanced Enterprises*
7. *Baoshan District Advanced Manufacturing Industry Development Special Fund*
8. *Baoshan District Industrial Development Support Matching Fund Special Fund*
9. *Baoshan District Science and Technology Innovation Special Fund*

G. *Programs For Which Additional Information Is Needed*

1. *Preferential Export Financing by the Export-Import Bank of China*

We are investigating whether the Export-Import Bank of China provided special export financing to Baoshan or its cross-owned companies. We intend to gather additional information about possible program use after this preliminary determination.

2. *Government Provision of Granted Land-Use Rights for LTAR*

We are investigating whether the GOC granted land-use rights for LTAR to Baoshan or its cross-owned companies. We intend to gather additional information about possible program use after this preliminary determination.

### **XIII. VERIFICATION**

As provided in section 782(i)(1) of the Act, we intend to verify the factual information submitted by the GOC and Baoshan.




#### XIV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

4 MARCH 2014  
Date